

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed September 25, 2007.

### **I. Response to Claim Rejections based on Anticipation**

In the Office Action, claims 1-9, 11-14, 17-34, 36, 38, 39, 87-92, and 95 are rejected as anticipated by one or more of US Patent 5,972,368 to McKay, US Patent No. 6,846,853 to Shimp, WO 02/11781 A1 to Lo, US Patent Application 2003/0009225 A1 to Khandkar et al., and US Patent 6,200,347 to Anderson et al. For a proper rejection of a claim under 35 USC§102(b), the cited reference must disclose all elements/features/steps of the claim. See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

Claims 1 and 87 require an at least partially sinus cavity-shaped graft. Neither McKay, nor Shimp, nor Khandkar et al, nor Lo, nor Anderson disclose an at least partially sinus cavity-shaped graft. As discussed in the background, sinus lifts have previously been accomplished by opening a window to the sinus (see FIG. 6) and inserting a formable material or a loose rigid fill material. There is no evidence in the prior art, cited or otherwise, to produce the at least partially sinus cavity-shaped graft disclosed in the present invention as required by claims 1 and 87. Thus, claims 1 and 87 cannot be anticipated by the prior art.

Claims 2-39 and 88-95 depend from claim 1 and 87 and are allowable for at least the reason that they depend from an allowable claim.

### **II. Response To Claim Rejections Based On Obviousness**

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In the Office Action, claims 10, 15, 16, 35, 37, 87, 93, and 94 are rejected as obvious over McKay or Anderson in view of US Patent No. 5,989,289 to Coates et al. or McKay in view of Anderson. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., In re Dow Chemical, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988), and In re Keller, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

Claims 1 and 87 require an at least partially sinus cavity-shaped graft. Neither McKay, nor Coates, nor Anderson disclose an at least partially sinus cavity-shaped graft. As discussed in the background, sinus lifts have previously been accomplished by opening a window to the sinus (see FIG. 6) and inserting a formable material or a loose rigid fill material. There is no evidence in the prior art, cited or otherwise, to produce the at least partially sinus cavity-shaped graft disclosed in the present invention as required by claims 1 and 87. Thus, the cited references fail to disclose every element of the claimed invention. Claims 10, 15, 16, 35, 37, 87, 93, and 94 are allowable at least for the reason they depend from claims that contain elements not disclosed in the cited references.

### **III. Response to Claim Rejections Based on Enablement**

Claims 3, 4, 88, and 89 have been canceled. Claim 91 has been amended to clarify the claimed subject matter. Withdrawal of the 112 rejection is respectfully requested.

#### **IV. Response to Drawings Objection**

The drawings were objected to under 37 CFR 1.83(a). Applicant respectfully traverses the objection. One having ordinary skill in the art will have an understanding of the cutting tool, window template, implant base and tool for installing the implant base such that figures of the same are not required for fully understanding the contemplated invention as claimed. Withdrawal of the rejection is respectfully requested.

#### **V. Non-Statutory Subject Matter**

Claim 5 has been amended to avoid non-statutory subject matter.

#### **VI. Double Patenting**

The Applicant submits the claims herein are sufficiently narrow to void the double patenting rejection.

### **CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1, 2, 4-39, 87, and 90-95 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are

hereby courteously requested. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 668-1400.

Respectfully submitted,



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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being deposited with the United States Patent Office via the electronic filing procedure on March 25, 2008.

By: 

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